: 4410-09-P

DEPARTMENT OF JUSTICE
Drug Enforcement Administration

[Docket No. 22-19]
Faris Abusharif, M.D.
Decision and Order

On March 2, 2022, the Administrator, Drug Enforcement Administration (hereinafter, DEA), issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter, OSC/ISO) to Faris Abusharif, M.D. (hereinafter, Respondent) of Orland Park, Illinois. OSC/ISO, at 1 and 6. The OSC/ISO notified Respondent of the immediate suspension of his Certificate of Registration No. BA8201775 because "[his] continued registration constitutes 'an imminent danger to the public health or safety.'" *Id.* at 1 (citing 21 U.S.C. § 824(d)). Pursuant to 21 U.S.C. § 824(a)(4), the OSC/ISO also proposed the revocation of Respondent's Certificate of Registration No. BA8201775 because "[his] continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. § 823(f)." *Id.*

The OSC/ISO alleged that from at least February 10, 2017, through at least January 5, 2022, Respondent "issued numerous prescriptions for controlled substances to five individuals outside of the usual course of professional practice and not for a legitimate medical purpose." *Id.* at 3. The OSC/ISO also alleged that during an interview by DEA on July 22, 2021, Respondent admitted to ordering Adderall from his distributor and taking it himself without a prescription as well as to prescribing Ritalin and tramadol to himself between November 14, 2020, and February 27, 2021 in violation of state law. *Id.* at 2-3. Regarding Respondent's alleged misconduct, the OSC/ISO alleged violations of 21 C.F.R. § 1306.04(a) and 7 Ill. Adm. Code § 3100.380. *Id.* at 2.

Pursuant to 21 U.S.C. § 824(d) and 21 C.F.R. § 1301.36(e), the OSC/ISO immediately suspended Respondent's Certificate of Registration No. BA8201775 after a preliminary finding that Respondent's continued registration was inconsistent with the public interest and that Respondent's continued registration during the pendency of the proceedings would constitute an imminent danger to the public health or safety. *Id.* at 5.

The OSC/ISO notified Respondent of the right to request a hearing on the allegations or to submit a written statement while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 5-6 (citing 21 C.F.R. § 1301.43).

By letter dated March 21, 2022, Respondent requested a hearing[1] and argued that his prescribing was consistent with the public interest, part of the usual course of professional practice, and only for legitimate medical purposes. Request for Hearing, at 1. The Office of Administrative Law Judges put the matter on the docket and assigned it to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, the Chief ALJ). On March 21, 2022, the Chief ALJ issued an Order for Prehearing Statements. On March 23, 2022, the Government submitted a Motion to Exceed Page Limit, Opposed Motion for Summary Disposition, and Unopposed Motion for Continuance (hereinafter, Motion for Summary Disposition). In its Motion for Summary Disposition, the Government alleged that on March 18, 2022, after the OSC/ISO had already been served, the State of Illinois Department of Financial and Professional Regulation issued a temporary suspension of Respondent's state medical license. Motion for Summary Disposition, at 1. The Government provided documentation to support its claim and argued that, accordingly, Respondent's lack of state authority formed an independent basis to revoke Respondent's registration. *Id.*; *see also id.* Government Exhibit (hereinafter, GX) 3-5. The Government concluded by requesting that its Motion for Summary Disposition be granted and Respondent's registration be revoked based on Respondent's lack of state authority. Motion for Summary Disposition, at 7-8.

The Government is not required to issue an amended OSC to notice an allegation of a registrant's lack of state authority that arises during the pendency of a proceeding regarding a DEA registration. *Hatem M. Ataya, M.D.*, 81 Fed. Reg. 8221, 8244 (2016). Previous Agency

[1] The Agency finds that the Government's service of the OSC/ISO was adequate and that the Request for Hearing was timely filed on March 21, 2022.

decisions have stated that because the possession of state authority is a prerequisite for obtaining and maintaining a registration, the issue of state authority can be raised at any stage of a proceeding. *See Ataya*, 81 Fed. Reg. at 8244; *Joe M. Morgan, D.O.*, 78 Fed. Reg. 61,961, 61,973-74 (2013). Nonetheless, in such cases, a registrant must be provided with a meaningful opportunity to contest the allegation. *See, e.g.*, *Lawrence E. Stewart, M.D.*, 86 Fed. Reg. 15,257, 15,257 (2021); *Cypress Creek Pharmacy LLC*, 86 Fed. Reg. 71,927, 71,927 (2021); *Lesly Pompy, M.D.*, 84 Fed. Reg. 57,749, 57,749-50 (2019); *Ataya*, 81 Fed. Reg. at 8245; *Morgan*, 78 Fed. Reg. at 61,973-74.

On March 24, 2022, the Chief ALJ issued an Order Granting Leave to File a Motion With an Oversized Attachment, Setting a Briefing Schedule, and Modifying the Order for Prehearing Statements (hereinafter, Briefing Schedule). In the Briefing Schedule, Respondent was given the opportunity to file a reply to the Government's allegation that he currently lacks state authority to handle controlled substances. Briefing Schedule, at 1. On April 1, 2022, Respondent filed his Response to Drug Enforcement Administration's Opposed Motion for Summary Disposition (hereinafter, Response). In his Response, Respondent argued that the Government's Motion for Summary Disposition should be denied because the suspension of Respondent's state medical license was based on "unproven allegations – not facts", and a hearing on the merits had not yet occurred. Response, at 2-3. Further, Respondent argued that he had had no truly meaningful opportunity to refute the Government's claims because the Government had based its Motion for Summary Disposition on "unproven and unsubstantiated allegations." *Id.* at 3.

On April 5, 2022, the Chief ALJ issued an Order Granting the Government's Motion for Summary Disposition and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, Recommended Decision or RD). In the RD, the Chief ALJ granted the Government's Motion for Summary Disposition, finding that there was no dispute of fact necessitating a hearing. RD, at 6-7. In concluding the RD, the Chief ALJ recommended that Respondent's DEA registration be revoked based on his lack of state

authority. *Id.* at 7. By letter dated May 2, 2022, the Chief ALJ certified and transmitted the record to the Agency for final Agency action and advised that neither party filed exceptions.

The Agency agrees with the Chief ALJ and issues this Decision and Order based on the entire record before the Agency. 21 C.F.R. § 1301.43(e). The Agency makes the following findings of fact.

FINDINGS OF FACT

Respondent's DEA Registration

Respondent is the holder of DEA Certificate of Registration No. BA8201775 at the registered address of 16604 107th St, Orland Park, Illinois 60467. GX 1 (Certificate of Registration). Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Respondent's registration expires on June 30, 2024. *Id.*

The Status of Respondent's State License

On March 18, 2022, the Illinois Department of Financial and Professional Regulation (hereinafter, the Department) issued an Order suspending both Respondent's Illinois medical license and Illinois controlled substance license after finding that "Respondent's actions constitute[d] an immediate danger to the public." GX 5, at 4-5; *see also id.* at 21-22 (Affidavit of S.G.). Respondent was notified that the suspension was temporary and that a hearing would be held on the allegations against him that formed the basis of the suspension. *Id.* at 1-2. According to the Department's Petition for Temporary Suspension, these allegations included, among other things, that Respondent engaged in inappropriate sexual conduct with patients of his private practice, that Respondent inappropriately prescribed controlled substances to patients of his private practice, that Respondent self-prescribed controlled substances, and that Respondent ordered controlled substances from a supplier for his own use without a prescription. *Id.* at 6-14; *see also id.* at 23-54 (Complaint).

According to Illinois online records, of which the Agency takes official notice, Respondent's Illinois medical license is still suspended.[2] Illinois Department of Financial and Professional Regulation License Lookup, https://online-dfpr.micropact.com/lookup/licenselookup.aspx (last visited date of signature of this Order). Further, Illinois online records show that Respondent's Illinois controlled substance license is also suspended. *Id.*

Accordingly, the Agency finds that Respondent is not currently licensed to engage in the practice of medicine nor registered to dispense controlled substances in Illinois, the state in which he is registered with the DEA.

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

[2] Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Respondent may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

This rule derives from the text of two provisions of the CSA. First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . ., to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton,* 43 Fed. Reg. at 27,617. Moreover, because "the controlling question" in a proceeding brought under 21 U.S.C. § 824(a)(3) is whether the holder of a practitioner's registration "is currently authorized to handle controlled substances in the [S]tate," *Hooper*, 76 Fed. Reg. at 71,371 (quoting *Anne Lazar Thorn*, 62 Fed. Reg. 12,847, 12,848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner is still challenging the underlying action. *Bourne Pharmacy*, 72 Fed. Reg. 18,273, 18,274 (2007); *Wingfield Drugs*, 52 Fed. Reg. 27,070, 27,071 (1987). Thus, it is of no consequence that Respondent is still challenging the underlying action. What is consequential is the Agency's finding that Respondent is not currently authorized to dispense controlled substances in Illinois, the state in which he is registered with the DEA.

Pursuant to the Illinois Controlled Substances Act, a "practitioner" means "a physician licensed to practice medicine in all its branches . . . or other person licensed, registered, or otherwise lawfully permitted by the United States or this State to distribute, dispense, conduct

research with respect to, administer or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research." 720 Ill. Comp. Stat. Ann. 570/102(kk) (West 2022). Further, the Illinois Controlled Substances Act requires that "[e]very person who manufactures, distributes, or dispenses any controlled substances . . . must obtain a registration issued by the Department of Financial and Professional Regulation in accordance with its rules." *Id.* at 570/302(a). The Illinois Controlled Substances Act also authorizes the Department of Financial and Professional Regulation to discipline a practitioner holding a controlled substance license, stating that "[a] registration under Section 303 to manufacture, distribute, or dispense a controlled substance . . . may be denied, refused renewal, suspended, or revoked by the Department of Financial and Professional Regulation." *Id.* at 570/304(a).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to handle controlled substances in Illinois because both his Illinois medical license and his Illinois controlled substance license are suspended. As already discussed, a practitioner must hold a valid controlled substance license to dispense a controlled substance in Illinois. Thus, because Respondent lacks authority to handle controlled substances in Illinois, Respondent is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Respondent's DEA registration be revoked.

ORDER

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in the Administrator by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. BA8201775 issued to Faris Abusharif, M.D. Further, pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of Faris Abusharif, M.D. to renew or modify this registration, as well as any other pending application of Faris Abusharif, M.D. for additional registration in Illinois. This Order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register].

SIGNING AUTHORITY

This document of the Drug Enforcement Administration was signed on July 13, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Heather Achbach,
Federal Register Liaison Officer,
Drug Enforcement Administration.

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